

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANTONIA ROMAN,

Plaintiff,

-against-

GRETCHEN P. CAMPBELL,

Defendant.
-----X

Case No.: 07 CIV 8055
(CLB) (GAY)

**AFFIRMATION IN
OPPOSITION TO
PLAINTIFF'S
APPLICATION FOR A
DEFAULT JUDGMENT**

PHILIP M. AGLIETTI, an attorney duly admitted to practice law in the Courts of the State of New York, affirms the following under the penalties of perjury;

1. I am an attorney associated with **BURATTI, KAPLAN, McCARTHY & McCARTHY**, attorneys for defendant, **GRETCHEN P. CAMPBELL**, in the above entitled matter and as such, I am fully familiar with the facts and circumstances of this matter based upon the file maintained in your affirmant's office.

2. This affirmation is respectfully submitted in opposition to plaintiff's application seeking a default judgment against the defendant.

3. Plaintiff's action arose from a motor vehicle accident of July 14, 2006 on Route 59 West near the off-ramp of northbound Route 304. The plaintiff was a passenger in a motor vehicle driven by a non-party to this action. A copy of the police accident report for the accident is annexed hereto as **Exhibit "A"**.

4. Plaintiff's action was commenced by the service of a Summons and Complaint upon the defendant on September 28, 2007. An Answer was served on the plaintiff on October 30, 2007. Service of the Answer was twelve days late. A copy of the Answer is annexed hereto as **Exhibit "B"**.

5. Plaintiff's application for the default judgment is dated a week earlier, October 23, 2007, five days after the Answer's due date.

6. The twelve-day delay in serving the Answer resulted from the time it took for the defendant to provide the Complaint to her carrier, for the carrier to assign the case to my office and my preparation of the Answer.

7. My failure to contact plaintiff's counsel and advise him of the delay was inconsiderate to counsel, inconsiderate to this Court and a mistake.

8. In the case at bar, the clerk entered the defendant's default after notice by the plaintiff. A hearing has been scheduled to determine the alleged default. A default judgment has not been entered.

9. This Court may set aside a default for good cause shown. F.R.C.P. 55(c).

10. The defendant respectfully requests that the entry of default be set aside.

11. The United States Court of Appeals for the Second Circuit has held that the criteria for setting aside a default is less rigorous than an application to vacate a default judgment. American Alliance Ins. Co. Ltd. v. Eagle Ins. Co., 92 F3d 57 (2d cir., 1996).

12. There is a preference for resolving disputes on their merits at trial. In an application to set aside a default or to vacate a default judgment, the Court will consider whether the default was willful; whether the defaulting party has a meritorious defense; and how the plaintiff will be prejudiced by setting aside the default. S.E.C. v. McNulty, 137 F3d 732 (2d Cir., 1998) and Brien v. Kullman Industries, 71 F3d 1073 (2d Cir., 1995).

13. A default was willful when a defendant willfully refuses to respond to a

complaint. I.L.G.W.U. Nat. Retirement Fund v. Meredith Gray, Inc., 986 F. Supp 816 (SDNY, 1997). In the case at bar, there was a delay in answering. There was no refusal to Answer after a court order or a request from the plaintiff.

14. The Answer at bar was served twelve days late. It is respectfully submitted that the delay was not due to defendant's egregious conduct and has been explained.

15. It is further submitted that the defendant has a meritorious defense. As can be seen from the annexed police report, the plaintiff was passenger in a vehicle driven by a non-party to this action. While the defendant may bear some responsibility for the accident, the plaintiff's host driver may need to be added to this action.

16. Furthermore, the medical records provided by the plaintiff indicate that plaintiff alleges that, as a result of the accident, she suffered a cervical sprain/strain; a non-displaced 9th lateral right rib fracture and a right hand contusion.

17. Plaintiff appeared for eight physical therapy sessions from August 22 to October 15, 2006. An examination by Dr. A. Louis Mariorenzi, performed at the request of the plaintiff's no-fault carrier on October 31, 2006, shows that plaintiff had fully recovered from her alleged injuries. See copies of medical records annexed hereto as **Exhibit "C"**.

18. It is respectfully submitted that there is ample medical evidence to questions whether the amount in controversy exceeds the sum of \$75,000.

19. To set aside the default, the defendant must provide a sufficient showing of a meritorious defense and need not establish her defense conclusively. S.E.C. v. McNulty, supra.

20. Lastly, it is respectfully submitted that setting aside the default will not prejudice the plaintiff. Delay alone is not sufficient to establish prejudice unless the delay leads to a loss of evidence or increased difficulties in retrieving evidence. I.L.G.W.U. Nat Retirement Fund v. Meredith Gray, Inc., supra. Such is not the case at bar.

21. It is respectfully requested, therefore, that the twelve day delay in Answering the Complaint be excused and that the default be set aside.

Dated: Yonkers, New York
November 28, 2007


PHILIP M. AGLIETTI (PMA 7801)

EXHIBIT

“A”

Local Codes
06-19188
MTG222000038

POLICE ACCIDENT REPORT MV-104A (3/04)

☒ AMENDED REPORT

1	Accident Date Month 7 Day 14 Year 2006		Day of Week Friday	Military Time 12:51	No. of Vehicles 2	No. Injured 1	No. Killed 0	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<div> <div> VEHICLE 1 VEHICLE 1 - Driver License ID Number 434628154 Driver Name - exactly as printed on license NELSON, MARIA Address (Include Number and Street) 27 JF KENNEDY DRIVE City or Town STONY POINT State NY Zip Code 10980 Date of Birth Month 7 Day 8 Year 1971 Sex F Unlicensed <input type="checkbox"/> No. of Occupants 04 Public Property Damaged <input type="checkbox"/> Name - exactly as printed on registration BEALS, ROSEMARY E Sex F Date of Birth Month 12 Day 5 Year 1949 Address (Include Number and Street) 27 JF KENNEDY DR Apt. No. Haz Mat Code - Released <input type="checkbox"/> City or Town STONY POINT State NY Zip Code 10980 Plate Number CBW6342 State of Reg. NY Vehicle Year & Make 1998 TOYT Vehicle Type 4DSD Ins. Code 011 Ticket/Arrest Number(s) Violation Section(s) </div> <div> VEHICLE 2 VEHICLE 2 - Driver License ID Number 435365508 Driver Name - exactly as printed on license CAMPBELL, GRETCHEN P Address (Include Number and Street) 3 SPRINGSTEEN CT City or Town STONY POINT State NY Zip Code 10980 Date of Birth Month 3 Day 22 Year 1968 Sex F Unlicensed <input type="checkbox"/> No. of Occupants 01 Public Property Damaged <input type="checkbox"/> Name - exactly as printed on registration CAMPBELL, GRETCHEN P Sex F Date of Birth Month 3 Day 22 Year 1968 Address (Include Number and Street) 3 SPRINGSTEEN CT Apt. No. Haz Mat Code - Released <input type="checkbox"/> City or Town STONY POINT State NY Zip Code 10980 Plate Number GRETCH22 State of Reg. NY Vehicle Year & Make 2005 NISS Vehicle Type 4DSD Ins. Code 607 Ticket/Arrest Number(s) Violation Section(s) </div> </div>											
6	Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.					Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.					Circle the diagram below that describes the accident. or draw your own diagram in space #9. Number the vehicles.
7	VEHICLE 1 DAMAGE CODES Box 1 - Point of Impact 5 1 5 Box 2 - Most Damage 3 4 5 Enter up to three more damage codes					VEHICLE 2 DAMAGE CODES Box 1 - Point of Impact 1 1 2 Box 2 - Most Damage 3 4 5 Enter up to three more damage codes					ACCIDENT DIAGRAM See the last page for the accident diagram.
1	VEHICLE DAMAGE CODING: 1-13 SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED 15. TRAILER 18. NO DAMAGE 16. OVERTURNED 19. OTHER					Place Where Accident Occurred: County ROCKLAND <input type="checkbox"/> City <input type="checkbox"/> Village <input checked="" type="checkbox"/> Town of CLARKSTOWN Road on which accident occurred ROUTE 59 at 1) intersecting street ROUTE 304 NORTHBOUND OFF RAMP or 2) <input type="checkbox"/> N <input type="checkbox"/> S of <input type="checkbox"/> E <input type="checkbox"/> W feet miles (Milepost, Nearest intersecting Route Number or Street Name)					Cost of repairs to any one vehicle will be more than \$1000. <input checked="" type="checkbox"/> Unknown/Unable to determine <input type="checkbox"/> Yes <input type="checkbox"/> No
Accident Description/Officer's notes VEHICLE 1 WESTBOUND ON ROUTE 59 IN RIGHT LANE. VEHICLE 2 ENTERING WESTBOUND ROUTE 59 FROM NORTHBOUND ROUTE 304 OFF RAMP. VEHICLE 2 STRUCK THE PASSENGER SIDE OF VEHICLE 1. REAR RIGHT PASSENGER, ROMAN 88 YOA, TRANSPORTED TO NYACK HOSPITAL BY NANUET AMBULANCE AFTER COMPLAINING OF CHEST PAIN.											

ALL INVOLVED

	8	9	10	11	12	13	14	15	16	17 BY	TO 18	Names of all involved	Date of Death Only
A	1	1	4	1	35	F	-	-	-			NELSON, MARIA	
B	1	3	4	1	56	F	-	-	-			BEALS, ROSEMARY	
C	1	6	1	1	X	F	05	12	6	NANUET	4303	ROMAN, ANTONIA	
D	1	4	4	1	X	F	-	-	-			NELSON, MARITZA	
E	2	1	4	1	38	F	-	-	-			CAMPBELL, GRETCHEN P	
F													
Officer's Rank and Signature POLICE <i>Christopher G Maloney</i> Print Name in Full CHRISTOPHER G MALONEY Badge/ID No. 450 NCIC No. 04350 Precinct/Post Troop/Zone Station/Beat Sector 08 Reviewing Officer RUDDEN, LAWRENCE Date/Time Reviewed 7/18/2006 09:38													

US CENTER SHEET

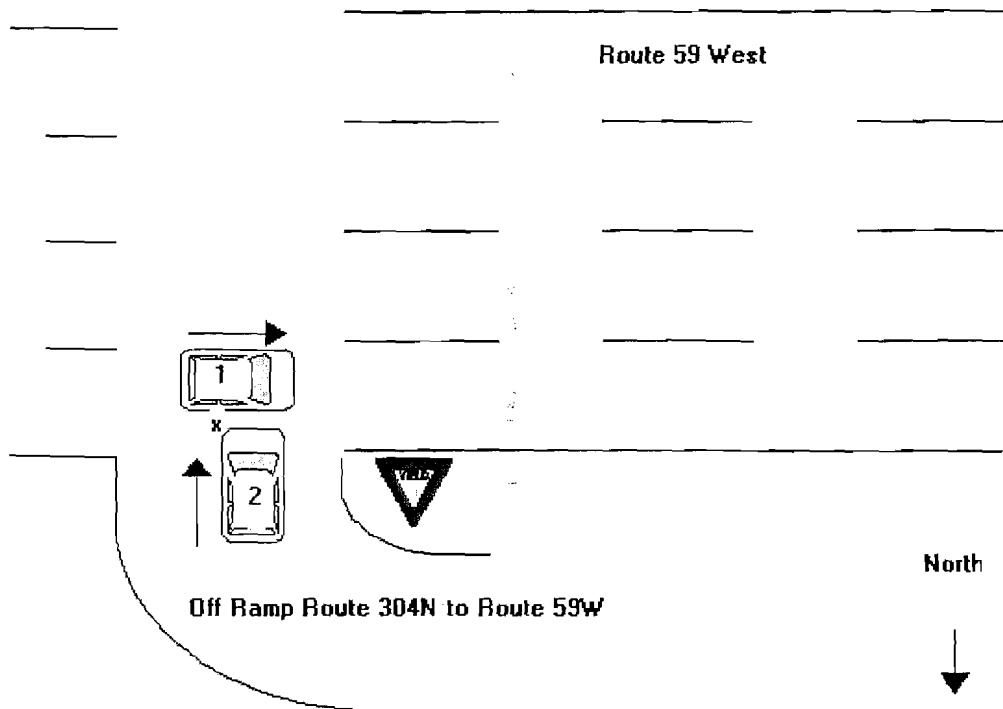
N

Local Codes
06-19188
MTG222000038

POLICE ACCIDENT REPORT MV-104A (3/04)

☐ AMENDED REPORT

Accident Date			Day of Week	Military Time	No. of Vehicles	No. Injured	No. Killed	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Month	Day	Year						Accident Reconstructed <input type="checkbox"/>		
7	14	2006	Friday	12:51	2	1	0			



EXHIBIT

“B”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANTONIA ROMAN,

Plaintiff,

-against-

GRETCHEN P. CAMPBELL,

Defendant.
-----X

Case No.: 07 CIV 8055
(CLB)

**NOTICE OF
APPEARANCE AND
ANSWER**

PLEASE TAKE NOTICE, that the Defendant, **GRETCHEN P. CAMPBELL**, hereby appears in this action by her attorneys, **BURATTI, KAPLAN, McCARTHY & McCARTHY**, and interposes the following Notice of Appearance and Answer to Complaint of the Plaintiff, **ANTONIA ROMAN**, as follows:

ANSWERING THE CAUSE OF ACTION

The Defendant alleges that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs numbered "1" and "5" in the complaint.

The Defendant denies upon information and belief the allegations contained in Paragraphs "9", "10", "11", "14", "15", "16" and "17" in the complaint.

The Defendant denies upon information and belief the allegations contained in Paragraphs numbered "3", "4", "12" and "13" in the complaint and respectfully refers this matter to the trial Court as a question of law.

The Defendant denies upon information and belief the allegations contained in Paragraph numbered "8" in the complaint except to admit contact.

**AS AND FOR A FIRST SEPARATE, AFFIRMATIVE AND COMPLETE
DEFENSE TO PLAINTIFF'S ALLEGED CAUSE OF ACTION,
DEFENDANT RESPECTFULLY SETS FORTH AND ALLEGES UPON
INFORMATION AND BELIEF:**

That any verdict in the within action, for past, present and future medical care, dental care, custodial care, or rehabilitation services, loss of earnings or other economic loss, should be reduced by the amount that any such expense has or will with reasonable certainty be replaced or indemnified in whole or in part from any collateral source, in accordance with the provisions and limitations of Section 4545(c) of the New York State CPLR.

**AS AND FOR A SECOND SEPARATE, AFFIRMATIVE AND COMPLETE
DEFENSE TO PLAINTIFF'S ALLEGED CAUSE OF ACTION,
DEFENDANT RESPECTFULLY SETS FORTH AND ALLEGES UPON
INFORMATION AND BELIEF:**

Plaintiff, **ANTONIA ROMAN**, has failed to sustain a serious physical injury as defined by Article 51 of the Insurance Law of the State of New York.

**AS AND FOR A THIRD SEPARATE, AFFIRMATIVE AND COMPLETE
DEFENSE TO PLAINTIFF'S ALLEGED CAUSE OF ACTION,
DEFENDANT RESPECTFULLY SETS FORTH AND ALLEGES UPON
INFORMATION AND BELIEF:**

Plaintiff, **ANTONIA ROMAN**, is limited to recovery for basic economic loss as provided for by the no-fault provisions of Article 51 of the Insurance Law of the State of New York.

**AS AND FOR A FOURTH SEPARATE, AFFIRMATIVE AND COMPLETE
DEFENSE TO PLAINTIFF'S ALLEGED CAUSE OF ACTION,
DEFENDANT RESPECTFULLY SETS FORTH AND ALLEGES UPON
INFORMATION AND BELIEF:**

Any damages sustained by the Plaintiff, **ANTONIA ROMAN**, were caused by the culpable conduct of the Plaintiff, including contributory negligence or assumption of risk,

and not by the culpable conduct or negligence of the third-party defendant.

**AS AND FOR A FIFTH SEPARATE, AFFIRMATIVE AND COMPLETE
DEFENSE TO PLAINTIFF'S ALLEGED CAUSE OF ACTION,
DEFENDANT RESPECTFULLY SETS FORTH AND ALLEGES UPON
INFORMATION AND BELIEF:**

Plaintiff, **ANTONIA ROMAN**, failed to use or misused available seat belts, and thereby contributed to the alleged injuries.

WHEREFORE, the defendant demands judgment dismissing this Complaint, together with the costs and disbursements of this action.

Dated: Yonkers, New York
October 30, 2007

Yours, etc.

BURATTI, KAPLAN, McCARTHY & McCARTHY

By: 

PHILIP M. AGLIETTI (PMA 7801)

Attorney for Defendant

GRETCHEN P. CAMPBELL

One Executive Boulevard, Suite 280

Yonkers, New York 10701

(914) 378-3900

Our File No.: 21937

To: **VLOCK & ASSOCIATES, P.C.**
Attorneys for Plaintiff
230 Park Avenue
New York, New York 10169
(212) 557-0020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANTONIA ROMAN,

Plaintiff,

-against-

GRETCHEN P. CAMPBELL,

Defendant.
-----X

Case No.: 07 CIV 8055
(CLB)

**AFFIRMATION OF
SERVICE**

STATE OF NEW YORK)
):SS.:
COUNTY OF WESTCHESTER)

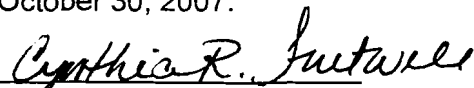
VINCENT P. MOLLICONE, being duly sworn, deposes and says: Deponent is not a party to the action, is over 18 years of age and resides in Putnam County.

On October 30, 2007, deponent served the within **NOTICE OF APPEARANCE AND ANSWER**, upon the following attorneys in this action, at the addresses indicted below, which addresses have been designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

TO: Vlock & Associates, P.C.
230 Park Avenue
New York, New York 10169


VINCENT P. MOLLICONE

Sworn to before me on this
October 30, 2007.


CYNTHIA R. FRETWELL
Notary Public, State of New York
No. 01FR6132272
Qualified in Westchester County
Commission Expires **August 22, 2009**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CASE NO. 07 CIV 8055 (CLB)

ANTONIA ROMAN,

Plaintiff,

- against -

GRETCHEN P. CAMPBELL,

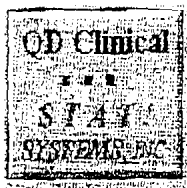
Defendant.

NOTICE OF APPEARANCE AND ANSWER

**BURATTI, KAPLAN, McCARTHY & McCARTHY
ATTORNEYS AND COUNSELORS AT LAW
ATTORNEYS FOR DEFENDANT
ONE EXECUTIVE BOULEVARD, SUITE 280
YONKERS, NEW YORK 10701
(914) 378-3900**

EXHIBIT

“C”



Martin J. Kerzer, D.O.
857 Post Road
Warwick, RI 02888

Report Data
Patient: Antonia Roman
Visit: 239522
Date: 08/01/06
Examiner: Martin Kerzer, D.O.

Vitals

BP: 124/90 Pulse Rate: 60 Temp: 97.8 Ht: 60.5 Inches Wt: 160 Lb

HISTORY:

Antonia Roman presents with her granddaughter who states that she was a rear seat passenger of an automobile that was involved in an accident on 7/14/06. The car was struck on the rear passenger side by another car.

She denies any head trauma or loss of consciousness. The patient's past medical history is significant for arthritis and hypertension. She is unsure of her medications.

The patient was seen at an Emergency Room in Nyack, NY following the accident. She is retired.

The patient is complaining of right hand, rib and neck pain. The patient was leaning on her hand on the window when the car was struck. Since the accident the patient's symptoms have persisted.

OBJECTIVE FINDINGS:

Physical Exam revealed a 67 year-old female who was in some distress. Heart and lungs were normal. Her abdominal exam was unremarkable.

Musculoskeletal exam revealed tenderness and muscle spasm of the cervical spine. Range of motion was markedly restricted to approximately 25% normal in all directions. Right lateral rib tenderness with palpation was noted. She had tenderness of the lateral right hand. The neurologic exam was unremarkable.

DIAGNOSIS:

Acute Cervical Spine Sprain and Strain.
Right Hand Contusion.
Contusion Right Ribs. Possible fracture.

TREATMENT:

The patient was advised to ice the affected areas.
I asked her family to bring in her medications.
She was referred for a course of physical therapy.
The patient was advised to rest.
X-rays will be obtained.

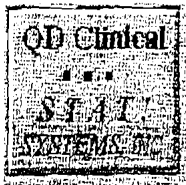
ACS

:212-788-3952

Mar 14 20

11:36

P.14



Martin J. Kerzer, D.O.
857 Post Road
Warwick, RI 02888

Report Data

Patient: Antonia Roman

Visit: 242542

Date: 08/22/06

Examiner: Martin Kerzer, D.O.

The patient is here for a return visit. Currently, she is doing a little better.

Her physical exam revealed pain with palpation of the right upper arm and lower arm and lateral right ribs.

Her cervical spine ROM is a little better.

She was advised to start physical therapy and was instructed in breathing exercises. Carmen is present. She will be re-evaluated in 4 weeks.

The patient was advised to call me if she has any problems.



Martin J. Kerzer, D.O.
857 Post Road
Warwick, RI 02888

Report Data

Patient: Antonia Roman

Visit: 248802

Date: 09/12/06

Examiner: Martin Kerzer, D.O.

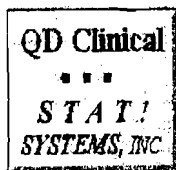
The patient is here for a re-evaluation with her son. Currently, she is doing better and is showing improvement with the PT.

Her physical exam revealed less tenderness with improved range of motion of the neck.

Some right rib tenderness

She was advised to continue with the physical therapy and increase the strengthening exercises. She will be re-evaluated in 4 weeks.

The patient was advised to call me if she has any problems.



Martin J. Kerzer, D.O.
857 Post Road
Warwick, RI 02888

Report Data
Patient 18028 Antonia Roman
Birthdate 11/02/18 Age 88 year-old Sex F
Group MD Martin Kerzer

1) IMAGING XRAYCSPINE *See detail 18028*1 O 08/08/06
Detail for Test 18028*1
Test#: 1
Test Date: 08/08/06
Name: xraycspine
Laboratory: IMAGING
Ordered By: 1 Martin Kerzer
Lab Order Dx Code #: None Given

Test Data

Description: *****FINAL REPORT*****

08/08/2006
PATIENT:
ANTONIA ROMAN

DOB:
11/02/1918

HOME:
(401) 946-1211

WORK:
401

MARTIN J KERZER, DO
857 POST ROAD
WARWICK, RI 02888

Dear MARTIN J KERZER, DO

08/08/2006
X-RAY C-SPINE W/ OBLIQUES

INDICATION: Pain, motor vehicle accident.

In evaluation of the cervical spine, diffuse osteopenia is present. There is no plain film detection of fractures. The prevertebral soft tissues are intact. There

Record Lab	Test Name	Result	Det	ST Date
------------	-----------	--------	-----	---------

is no evidence for a traumatic listhesis.

Moderate degenerative arthritis is noted including endplate sclerosis and bony osteophyte formation.

IMPRESSION:

Advanced osteopenia, without evidence for cervical spinal fractures.
Degenerative spondylosis.

08/08/2006 X-RAY HAND-RIGHT 3 VIEWS

INDICATION: Pain, motor vehicle accident.

Osteopenia is identified. There is significant degenerative arthritic changes noted of the first and second MCP, DIP and second PIP joints. The base of the thumb and the remaining DIP and PIP joints have moderate degree of degenerative arthritis. No acute fractures are detected.

IMPRESSION: Moderately advanced degenerative arthritis right hand, without evidence for acute fractures.

08/08/2006 X-RAY RIBS-RIGHT W/ CHEST

INDICATION: Pain, motor vehicle accident.

Osteopenia is present. There is cortical irregularity suggestive of a nondisplaced fracture of the 9th lateral right rib. Mild atelectasis is identified in the right basilar region, without significant effusion formation, evidence for a contusion or large effusion on PA view. The heart is normal in size. The lungs are clear of consolidation as well.

IMPRESSION: Nondisplaced fracture of the 9th lateral right rib with underlying right basilar atelectasis.

Thank you for your referral to The Imaging Institute

Electronically signed by:
TERRY P. PRINCE, M. D.

=====

**



Family Medicine • Internal Medicine

857 POST ROAD • WARWICK, RHODE ISLAND 02886-3359
(401) 467-3115 Fax (401) 467-9120Martin J. Kerzer, D.O.
Dennis D. Botello, M.D.
David J. Frederiks, M.D.
Amy B. Berrol, P.A.-C.
Jan Berard, R.N.P.C.

INITIAL PHYSICAL THERAPY REPORT

NAME: Antonia RowanDATE: 3/22/12DOCTOR: Martin Kerzer

Pt. is a pleasant, well developed 88% female who states she was involved in a motor vehicle accident on 7/17/02 when the vehicle in which she was a passenger backseat was struck from behind by another vehicle, impact of which jolted her body, hitting @ mid area into door; exposed neck @ mid cage, @ low injuries. Taken by Paramedics to NY ER (Newman) May. 2002 cost \$500.

Range of Motion (Cervical) 70/80% all range mild motion upon all motions @ upper torso. Rotation @ skull depressed. Trunk motion @ mid cage. Limited after initial.

Strength and 6- Coals, & pain in spine & from. Patient mostly ignores. Rotation @ mid cage. It will be seen 303w. Patient will accept of treatment. Cervical. Neck @ mid cage. Rehabilitation team.

Antoine Brown

F7091000100100

8/29/06 Pt. was treated in sitting
 Northwest Debra's Camp of Northwest
 Child Care, pt. sat so well -

8/31/06 Pt. report of large Child Care, such
 improving in treatment, pt. sat so well

9/5/06 Pt. something clearly from
 Child 8/90? Tentative Child Care, pt. sat
 so well -

9/10/06 Pt. was treated in sitting
 Northwest, Debra's, motivated pt. in
 direction and so. pt. sat so well

9/19/06 Rom was, mild Antenna C67 am
 Continue in front of Program

9/26/06 "my rich is better" Received Home for
 Program

10/18/06 Pt. points of open in Antenna and

Continue in front of Program - Received Home for Program.



ASSOCIATES IN PRIMARY CARE MEDICINE, INC.

Family Medicine • Internal Medicine

857 POST ROAD • WARWICK, RHODE ISLAND 02886-3359
(401) 467-3115 Fax (401) 467-9120

NAME:

Antonia Rowan

DOCTOR:

Natalia Kyr...

DX: Clav S4Sp1 Fx @ nls

HOT PACKS	C D L	✓	✓	✓	✓	✓	✓	✓											
INFRA RED	C D L																		
ULTRA SOUND	C D L																		
EGS	C D L	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
TRACTION	C L																		
WHIRLPOOL																			
MASSAGE	C D L																		
PASSIVE EXERCISE	C D L																		
ACTIVE EXERCISE	C D L																		
ACTIVE ASSIST. EXERCISE	C D L																		
STRENGTHENING EXERCISE	C D L																		
SUPPLY																			
MFR	C D L																		
ICE MASSAGE	C D L	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
OTHER																			
NOTES TAKEN		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
INITIALS		AR	AR	AR	AR	AR	AR	AR	AR	AR	AR	AR	AR	AR	AR	AR	AR	AR	AR

COMMENTS:

A. LOUIS MARIJORENZI, M.D.

LOUIS J. MARIJORENZI, M.D.

GREGORY J. AUSTIN, M.D.

MICHAEL P. MARIJORENZI, M.D.

CHRISTOPHER N. CHILIAS, M.D.

ORTHOPAEDIC
ASSOCIATES, INC.JOINT REPLACEMENT SURGERY • HAND SURGERY • SPORTS
MEDICINE • FOOT AND ANKLE RECONSTRUCTION • FRACTURES •
SOFT TISSUE INJURIES • OSTEOPOROSIS MANAGEMENT •
ADULT RHEUMATISM

KENNETH R. CATALLOZZI, M.D.

IRA J. SINGER, M.D.

SIDNEY P. MICHAEL, M.D.

JOSEPH T. LITRAK, M.D.

LISA K. HARRINGTON, M.D.

November 5, 2006

D&D Associates—Hooper Evaluations
PO Box 9150
Garden City, NY 11530RE: Antonia Roman
20 Kelley Street
Providence, RI 02909Date of Evaluation: 10/31/06
Date of Injury: 7/14/06
Claim#: 3635195202
DD#: 1002920

CHIEF COMPLAINT: Injury to the neck, right ribs and right arm.

HISTORY: This 87-year-old female was a passenger riding in the rear seat of a motor vehicle which was struck on the passenger's side rear door. She states immediately after the accident she was frightened and later was seen at a local hospital where she was examined, x-rays taken and she was released. The accident occurred in New York. When she returned to RI, she was seen by Dr. Kerzer and was treated with medication and PT which at the present time, has been discontinued.

At the time of this evaluation she complains of some pain in the right arm. She complains of pain in the cervical area with some discomfort in the intrascapular region on the right side. She states for these complaints she takes medication but the name of which she does not know. She is not clear whether or not if she remains under Dr. Kerzer's care and may have been discharged.

PHYSICAL EXAMINATION: Alert cooperative female. NAD. Exam of the head revealed it to be symmetrical. Neck revealed a normal cervical lordotic curvature. There was no tenderness or spasm of the paracervical muscles. Flexion, extension, lateral bends and rotatory motion were normal in range. Compression Test was negative. Intrascapular tenderness was absent and scapulothoracic motion was normal. Exam of the thoracic rib cage revealed good expansion with inspiration/expiration. Compression of the chest in the AP and lateral plane was not associated with any pain or discomfort and no localized areas of point tenderness throughout the thoracic rib cage on the right or left side were noted to be present. Exam of the right upper extremity was normal. Exam of the right



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R E C D

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hand revealed arthritic changes involving all joints of the hand with specific involvement of the MP joint of the index and middle finger with some changes involving the CMC joint of the hand manifested by bulbous thickening, restricted motion, grating and crepitation. Circulation and sensory exam were noted to be normal.

X-RAYS: No x-rays were taken at the time of this evaluation. The patient did bring to the office with her x-rays of the cervical spine showing evidence of degenerative spondylosis throughout the cervical area, moderate in degree with some osteophytic spur formation. There is no evidence of fractures or acute injuries. X-rays of the right hand reveal moderate degenerative arthritic changes involving the MP joint of the index and middle finger involving the PIP and DIP joints of the thumb with some generalized arthritic changes in the other digits. X-rays of the right rib cage show a non-displaced fracture of the ninth rib and x-rays of the chest reveal a right basilar atelectasis. All of these x-rays were dated 8/8/06.

IMPRESSION: 1) Cervical strain with full recovery.
2) Contusion right hand with full recovery.
3) Undisplaced fracture ninth rib right side with full recovery.

DISCUSSION: This patient as a result of the above stated MVA, suffered the injuries as stated above. At the time of this evaluation, her physical findings are WNL with no evidence of any residual soft tissue injuries to the above stated areas and her clinical evaluation would indicate that the non-displaced rib fracture at this time has healed.

It is my opinion that from these injuries, she has at this time, made a full and complete recovery. She has reached MMI and from these injuries no functional impairment has resulted. It is also my opinion that further treatment to cure or rehabilitate her from these injuries is not indicated.

PROGNOSIS: The patient's prognosis is good. MMI with no PPI has resulted.



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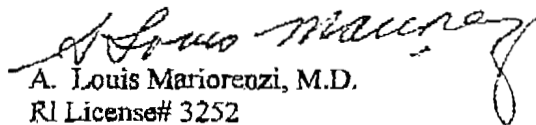
~~ABILITY TO WORK: The patient presently should be capable of resuming full and~~
normal activity consistent with her age.

CAUSAL RELATIONSHIP: The above stated injuries appear to have resulted from the
MVA as indicated by the history given to me by the patient.

The above statements were made to within a reasonable degree of medical certainty.

I declare under the penalties of perjury, that the information contained within this
document was prepared and is the work produce of the undersigned and is true to the best
of my knowledge and information.

Sincerely,


A. Louis Mariorenzi, M.D.
RI License# 3252

ALM/hmn

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANTONIA ROMAN,

Plaintiff,

-against-

GRETCHEN P. CAMPBELL,

Defendant.
-----X

Case No.: 07 CIV 8055
(CLB)

**AFFIRMATION OF
SERVICE**

STATE OF NEW YORK)
):SS.:
COUNTY OF WESTCHESTER)

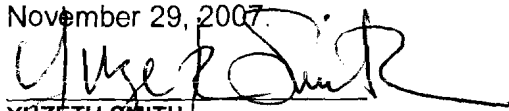
VINCENT P. MOLLICONE, being duly sworn, deposes and says: Deponent is not a party to the action, is over 18 years of age and resides in Putnam County.

On November 29, 2007, deponent served the within **AFFIRMATION IN OPPOSITION TO PLAINTIFF'S APPLICATION FOR A DEFAULT JUDGMENT**, upon the following attorneys in this action, at the addresses indicted below, which addresses have been designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

TO: Vlock & Associates, P.C.
230 Park Avenue
New York, New York 10169


VINCENT P. MOLLICONE

Sworn to before me on this
November 29, 2007.



YUZETH SMITH
Notary Public, State of New York
No. 01SM6070889
Qualified in **Westchester** County
Commission Expires **March 11, 2010**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CASE NO. 07 CIV 8055 (CLB) (GAY)

ANTONIA ROMAN,

Plaintiff,

- against -

GRETCHEN P. CAMPBELL,

Defendant.

AFFIRMATION IN OPPOSITION TO PLAINTIFF'S APPLICATION FOR A DEFAULT JUDGMENT

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